IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6360 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIPBHAI M BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6360 of 1992

MR PH PATHAK for Petitioner

MR KT DAVE, AGP for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 11/10/2002

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any

other appropriate writ, order or direction, declaring that the action on the part of the respondent in not considering his case for promotion for Class-I post after the inquiry proceedings were over, is arbitrary, illegal, unconstitutional and violative of the provisions of Articles 14 & 16 of the Constitution. The petitioner has further prayed to direct the respondent to promote the petitioner to the post of Class-I Officer retrospectively i.e. with effect from February 8, 1992, and pay all monetary benefits with 18% interest thereon.

2. The petitioner was initially appointed as Class-II Officer with effect from December 2, 1980. The next promotional post is that of Class-I Officer. According to the petitioner, he was entitled to be promoted as Class-I Officer in the year 1986, but in the year 1985 he was served with chargesheet and as departmental proceedings were initiated against him, his case for promotion was not considered by the respondent, nor the respondent had followed the "sealed cover procedure". According to the petitioner, chargesheet which was served on him in the year 1985 was subsequently withdrawn and a fresh chargesheet was served to him on November 12, 1986. The petitioner has averred that by an order dated September 13, 1990, penalty of withholding of amount equivalent to four increments with permanent effect was imposed on him. What is claimed by the petitioner is that the respondent was under an obligation to place his case for promotion for consideration of the Departmental Promotion Committee, and that the decision of the Departmental Promotion Committee should have been implemented on the conclusion of the departmental inquiry. The petitioner has mentioned in the petition that as the case of the petitioner for promotion was not considered during the period between 1985 and 1988, the petitioner had filed Civil Suit No. 127/88 in the Court of learned Civil Judge (S.D.), Narol, wherein the petitioner had filed an application at Exh.5 claiming interim relief. It is stated by the petitioner that below application Exh.5, an order was passed by the Court directing the State Government to consider the case of the petitioner in the light of Government Resolution No. SLT-1080-895-4-2, dated April 2, 1983. The petitioner has claimed in the petition that with a view to avoiding compliance of direction given by the Court, the respondent had suspended the petitioner from service vide order dated February 2, 1989, but the Civil Court had stayed the operation of suspension order. The petitioner has informed the Court that the order passed by the Trial Court was confirmed by the first Appellate Court and that the petitioner was reinstated in service on November 20,

1991, but, his case for promotion to the higher post was not considered and in August, 1992, his juniors were considered for promotion in flagrant violation of the provisions of Articles 14 & 16 of the Constitution. According to the petitioner, his case for promotion to the higher post should have been considered with effect from February 8, 1992 and that he is entitled to promotion as well as other consequential benefits. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. N.P.Vachhani, Under Secretary to the Government of Gujarat, Panchayat, Rural Housing and Rural Development Department, has filed an affidavit-in-reply controverting the averments made in the petition. It is stated in the reply that the petition is filed by the petitioner on misconception that his case for promotion was not considered by the Departmental Promotion Committee, but,in fact, his case was considered by the Departmental Promotion Committee after the departmental proceedings were completed and that he was not promoted, as he was not found suitable. In the reply affidavit, it is stated that the petitioner was served with chargesheet on June 22, 1988 and was suspended with effect from February 3, 1989, and the departmental proceedings were completed vide order dated January 8, 1992. It is further stated in the reply that the case of the petitioner was considered by the Departmental Promotion Committee in its meeting held on June 2, 1992, and the fact that another departmental inquiry was pending against him was taken into consideration by the Departmental Promotion committee. What is mentioned in the reply affidavit is that on completion of the said inquiry, penalty of withholding of three increments without future effect was imposed by an order dated January 6, 1996 and thereafter the petitioner was promoted to the higher post with effect from February 17, 1997. Thus, by filing the reply affidavit, what is sought to be emphasized is that the case of the petitioner was considered for promotion on each occasion when the meeting of the Departmental Promotion Committee was held, but since the petitioner was not fulfilling the required criteria for promotion, he was not promoted. Initially, the learned counsel for the petitioner had refused to accept the affidavit-in-reply, but thereafter a copy of reply was accepted by him and submissions were made after taking into consideration the affidavit-in-reply. It is also relevant to notice that the statements of fact made in the affidavit-in-reply are not controverted by filing rejoinder affidavit.

4. I have considered the submissions advanced at the Bar and taken into consideration the documents forming part of the petition. From the record of the case it is evident that the case of the petitioner for promotion was considered by the Departmental Promotion Committee in its meeting held on June 2, 1992, but because of pendency of another departmental inquiry, he was not promoted and the said departmental inquiry had resulted into imposition of penalty of withholding of three increments without future effect vide order dated January 6, 1996. The contention that the petitioner should have been promoted with retrospective effect from the year 1986 when he became due for promotion, cannot be accepted. A fair reading of paragraph 7 of the petition with prayer contained in Clause (B) of paragraph 11 makes it manifest that the case of the petitioner is that he was entitled to be promoted with effect from February 8, 1992, and that on that basis the respondent should be directed to pay monetary benefits to him with 18% interest. A fair reading of the prayer clause would indicate that the petitioner is claiming promotion with effect from February 8, 1982 and not with effect from the year 1986. Further, the belated claim for promotion with effect from the year 1986 cannot be considered without affording the opportunity of being heard to those who are likely to be affected by the grant of said relief and who are not impleaded as the respondents in the present petition. Moreover, it is an admitted position that for misconduct on his part, the petitioner was served with a chargesheet dated November 12, 1986, and the departmental proceedings had resulted into imposition of penalty of withholding of four increments with permanent effect. It is well settled by catena of decisions that an employee has no right to promotion and he has only a right to be considered for promotion. Normally, 'sealed cover procedure' is resorted to when an employee is facing a departmental inquiry so that when an employee is completely exonerated, meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of salary etc. However, if any penalty is imposed on the employee, the findings in the sealed cover/covers cannot be acted upon even if they are in favour of the employee. The reasons is that, to qualify for promotion, the least that is expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. The least that is expected of any administration is that it does not reward an employee

with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to unfair treatment. A denial of promotion in such circumstances is not a penalty, but a necessary consequence of his conduct. Here in this case, for acts of misconduct committed by the pettitioner in the year 1985, he was visited with penalty vide order dated September 13, 1990, and for acts of misconduct committed by him in the year 1988, he was visited with penalty by an order dated January 8, 1992. Therefore, even if the 'sealed cover procedure' had been resorted to and the findings in the sealed cover/covers had been in favour of the petitioner, the petitioner would not be entitled to claim promotion retrospectively either with effect from the year 1986 or with effect from the year 1992. Under the circumstances, the claim for promotion with retrospective effect is hereby rejected. Further, what is mentioned in paragraph 7 of the petition is that in August, 1992, without considering the case of the petitioner for promotion, his juniors were considered for promotion and, therefore, the said action should be struck down as being violative of the provisions of Articles 14 & 16 of the Constitution. However, in paragraph 3 of the reply affidavit, it is specifically stated that the case of the petitioner for promotion was considered by the Departmental Promotion Committee in its meeting which was held on June 2, 1992 i.e. prior to the date on which the cases of the juniors to the petitioner were allegedly considered. and, therefore, the grievance made in paragraph 7 of the petition, has no substance. Thus, the case of the petitioner that his case was not considered by the Departmental Promotion Committee at the relevant time, is not borne out from the record of the case. Admittedly, the petitioner is promoted to the higher post with effect from February 17, 1997. As the case of the petitioner for promotion was considered by the respondent in the year 1992 and as he was not found fit to be promoted , the petitioner cannot be granted the reliefs prayed for in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. No order as to costs.

(J.M.Panchal,J.)

(patel)